IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 195 of 2001
with
CRIMINAL REVISION APPLICATION No 196 of 2001
and
CRIMINAL REVISION APPLICATION No 197 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAMMAD SALIM MOHAMMAD YUNUS SHAIKH
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 195, 196 & 197 of 2001
MR BM GUPTA for Petitioner No. 1
Mr.DP JOSHI, A.P.P. for Respondent No. 1
(in all the matters)

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/07/2001

COMMON ORAL JUDGEMENT

1. These three revisions involving common question of law and facts can be disposed of by common judgment.

2. Shri B.M.Gupta, learned Counsel for the revisionists and Shri D.P.Joshi, learned A.P.P. for the respondent No.1 have been heard. The orders under challenge in these revisions are the orders dated 20.4.2001 passed by the Special judge, C.B.I., Ahmedabad, rejecting the complaint of the complainant.

3. The contention of Shri Gupta has been that private complaint for taking action u/s.13(1)(d) of the Prevention of Corruption Act linked with other Sections of the Indian Penal Code can be filed before the Special Judge by private individual also and there is no bar for private complainant in filing such complaint. He further argued that the complaint was filed in accordance with law but it was not disposed of keeping in view the provisions of Sections 200 to 204 of the Code of Criminal Procedure. As against this Shri D.P.Joshi, learned A.P.P. contended that it is not the choice of the complainant to impress upon the court that investigation be carried out by a particular agency, for instance C.B.I. and that it is for the Court to decide which agency should investigate the matter. He further contended that in rare cases investigation should be ordered on private complaint to be conducted by the C.B.I.

4. After going through the impugned orders I am of the view that while passing the impugned order the learned Special Judge was swayed away of the fact that the complaint was nothing but an application u/s.156(3) Cr.P.C. for directing the C.B.I. to investigate into the allegations u/s.13(1)(d) of the Prevention of Corruption Act and also allegations under various other sections of the Indian Penal Code mentioned in the complaint. The accused Nos.1 to 3 are said to be public servants whereas against the remaining accused action has been prayed for under various sections of the Indian penal Code.

5. The first point for consideration is whether the impugned order is legal and in accordance with the procedure prescribed u/ss. 200 to 203 Cr.P.C. A plain reading of the complaint shows that it was not a simple application u/s.156(3) Cr.P.C. requesting the Special Judge, C.B.I., to direct the C.B.I. to investigate the matter. On the other hand it is a complaint as defined u/s.2(d) of the Cr.P.C. In Para : 18 of one of the complaints it is clearly mentioned that the complainant has filed private complaint u/s.2(d) Cr.P.C. which can be filed by him. Allegations are there in the complaint. The prayer is also for taking action. One of the prayers

is of course prayer for investigation u/s.156(3) Cr.P.C. by the C.B.I.

6. Section 2(d) of the Cr.P.C. defines complaint to mean any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not included a police report. For the purposes of this definition the word "Magistrate" shall include "Special Judge" when the complaint is filed under the provisions of the Prevention of Corruption Act. In cases under Prevention of Corruption Act the procedure for filing complaint before a Magistrate is dispensed with and such complaint can be directly filed before the Special Judge and the Special judge has to entertain it as complaint within the meaning of definition of complaint u/s.2(d) of the Cr.P.C.

7. It was not a case brought before the Special Judge by the Police. Consequently the procedure prescribed u/ss.200 to 203 of the Cr.P.C. were required to be followed by Special Judge, C.B.I.

8. Section 200 of the Cr.P.C. provides for examination of complaint when cognizance is taken for an offence by a Magistrate. In this case the word "Magistrate" shall be read as "Special Judge" and the duty is cast upon a Special Judge u/s.200 of the Cr.P.C. to examine the complaint on oath and the witnesses, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Special Judge. The next stage is u/s.201 of the Cr.P.C. which is not applicable in this case because the Special Judge has not pointed out that he was not competent to take cognizance of the offence and that the complaint was required to be returned for presentation to the proper court with an endorsement to that effect. Thus, Section 201 is not attracted and as such there cannot be any grievance that provisions of Section 201 Cr.P.C. were violated.

9. The next stage is provided u/s.202 Cr.P.C. which contemplates postponement of issue of process. Under this section if a Magistrate or a Special Judge on receipt of complaint of an offence by which he is authorised to take cognizance or which has been made over to him u/s. 192 may if he thinks fit postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a Police Officer, or by such other person as he thinks fit, for the purpose of deciding whether or not there is

sufficient ground for proceeding. It is thus clear from this section that if the Special Judge in the instant case was of the view that issuance of process is to be postponed against the accused because further enquiry was needed he was competent to inquire himself or that he could have directed further investigation to be made by a Police Officer or by such other person as he thinks fit for the purposes to decide whether or not there is sufficient ground for proceeding. This provision was not complied with by the Special Judge. The provisions of Section 200 Cr.P.C. were also not complied with by the Special Judge inasmuch as he did not examine on oath the complainant or any witnesses named by the complainant in the complaint.

10. The provisions of Section 203 Cr.P.C. were also violated. It provides that if after considering the statement on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. In the impugned order the Special Judge has not observed any where that after considering the statement on oath, which was not at all on record before him, that he was of the opinion that there is no sufficient ground for proceeding against the accused nor the reasons for dismissal of complaint expressly or impliedly have been recorded by the Special Judge. Thus, there was clear violation of Section 203 Cr.P.C. as well.

11. No doubt the complainant made a request inter-alia for investigation u/s.156(3) Cr.P.C. by the C.B.I. but that does not mean this was the only request or prayer contained in the complaint. From Para : 17 of one of the complaints it clearly appears that the complainant requested the Special Judge to initiate legal action against the accused persons. This fulfils the requirement of complaint as defined u/s.2(d) of the Cr.P.C. If the Special Judge was of the view that investigation by the C.B.I. was not necessary then he could have followed the procedure u/s. 200 Cr.P.C. and after examining the complainant and his witnesses on oath should have proceeded to act in accordance with Section 203 Cr.P.C. if he intended to dismiss the complaint after finding that there was no sufficient ground for proceeding against the accused. If, however, he found that there was material to proceed against the accused process should have been issued u/s. 204 Cr.P.C. This was also not done.

12. In view of above discussions I find that the impugned orders are not in accordance with law, especially according to the provisions of the Cr.P.C. referred to hereinabove. The orders impugned cannot be sustained. The Revisions, therefore, succeed and are hereby allowed. The impugned orders are set aside. The learned Special Judge is directed to proceed with the matter in accordance with law keeping in view the provisions of Sections 200, 202, 203 and 204 of the Code of Criminal Procedure.

sd/-

Date : July 10, 2001 (D. C. Srivastava, J.)

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